ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Application of GTE Corporation, Transferor,	)	CC Docket No. 98-184
And Bell Atlantic Corporation, Transferee, for	)	
Consent to Transfer of Control	)	

OPPOSITION OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

The Telecommunications Act of 1996 promised to deliver meaningful local exchange competition to the American public. To the detriment of consumers, local competition has not developed as envisioned. Instead, the ILECs have engaged in anti-competitive conduct and the Commission has approved several mergers reducing the number of major ILECs, thereby enabling the creation of fewer, larger and better-financed local exchange carriers with monopoly power. It is time now for the Commission to draw the line.

A combined Bell Atlantic/GTE would impede, and potentially eliminate, competition in the markets for local exchange, exchange access, long distance and Internet access services. First, the merger will deal a blow to the development of local competition. By proposing to merge, Applicants have effectively agreed not to compete against each other and, as a result, their merger will severely diminish local competition in their respective territories. With each successive ILEC merger, there are fewer potential competitors nationwide and, therefore, more harm to competition through the elimination of potential competitors. Applicants would have the Commission believe that neither would or could accomplish out-of-region expansion independently without the merger. This justification is simply not credible. CLECs have initiated significant efforts to enter the local market without nearly the resources of GTE or Bell Atlantic. In effect, Applicants are requesting that the Commission approve their decision not to compete against each other in exchange for vague expressions of intent to expand into out-of-region markets. The Commission should not accept this bargain.

Second, the merger raises obvious, serious issues of compliance with Section 271. GTE provides long distance services and an interLATA backbone Internet network throughout the country, including in Bell Atlantic's region. Bell Atlantic does not have Section 271 approval to

provide in-region, interLATA services in any state. Thus, as a matter of law, the Commission must reject the merger unless GTE completely exits the interLATA market in every in-region Bell Atlantic state or Bell Atlantic obtains the requisite Section 271 approvals. This conclusion applies fully to GTE's long distance operations in Virginia and Pennsylvania as "in-region States" within the meaning of Section 271.

Third, even assuming that Bell Atlantic receives Section 271 authority, the danger of cost-price squeeze here is significant because the merger of GTE and Bell Atlantic involves a huge concentration of access lines owned by the combined company. As long as Applicants continue to exercise market power over exchange access and to price access charges significantly above cost, they have the ability to subject any long distance competitor to a cost-price squeeze. In addition, the merger will endanger competition in the market for Internet services. The planned migration of Bell Atlantic's customer base onto GTE's Internet backbone will increase GTE's market power to a dangerous level. The merger will also increase the merged entity's total percentage of Internet users and traffic, thereby harming competition in the Internet access market.

Finally, denial of Applicants' request is required because of Bell Atlantic's lack of compliance with the conditions imposed in the *BA-NYNEX Order*. To date, Bell Atlantic has not fully complied with the conditions. Therefore, the Commission should immediately deny the instant application and defer any consideration of the merger until after Bell Atlantic has filed a compliance plan with the Commission subject to notice and comment. Once the Commission has found that Bell Atlantic has complied with the conditions previously imposed, then Applicants could reapply for authority to complete their merger.

TABLE OF CONTENTS

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OPPOSITION OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully opposes the application of GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") requesting authority to transfer control.[1] As explained below, GTE and Bell Atlantic (collectively "Applicants") have failed to show that the proposed merger between the two companies is in the public interest.

I. INTRODUCTION

On October 2, 1998, Applicants filed joint applications requesting Commission approval of the transfer of control to Bell Atlantic of licenses and authorizations of GTE and affiliated companies.[2] After the proposed merger, GTE would become a wholly-owned subsidiary of Bell Atlantic. Contrary to the Applicants' claims, the combined entity would impede, and potentially eliminate, competition in the markets for local exchange, exchange

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1 This opposition is filed in response to GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed by GTE and Bell Atlantic, CC Docket No. 98-184, *Public Notice*, DA 98-2035 (rel. Oct. 8, 1998).

2 Application for Transfer of Control, *In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer of Control*, CC Docket No. 98-184 (filed Oct. 2, 1998)("*Application*").

access, long distance and Internet access services. Thus, CompTel urges the Commission to deny this merger as contrary to the public interest.[3] It is time now for the Commission to "draw the line." If the Commission approves this Bell Atlantic/GTE merger, as well as the SBC Communications, Inc. ("SBC") and Ameritech Corp. ("Ameritech") merger, this country would be well on its way to the merging of the remaining major incumbent local exchange carriers ("ILECs") into one virtually nationwide, ubiquitous ILEC. CompTel submits that the public interest would not be served by the creation of a single nation-wide local exchange carrier.

Before the Commission can approve the transfer of control, it must find that the merger "would serve the public interest, convenience and necessity."[4] It is well-established that GTE and Bell Atlantic, the Applicants, bear the burden of proving to the Commission that the merger is in the public interest.[5] The public interest standard is both flexible and broad, generally encompassing the pro-competitive and deregulatory goals of the Telecommunications Act of 1996 ("1996 Act").[6] Specifically, among other issues, the Commission must consider whether a proposed transaction will "open[] all telecommunications markets to competition"[7] and "enhance[] access to advanced telecommunications and information services . . . in all

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3 CompTel is a national industry association representing competitive telecommunications carriers and their suppliers. With over 250 members, including both large national and small regional carriers, CompTel has a direct interest in the outcome of this proceeding. Many of its members would be competing against the proposed Bell Atlantic/GTE entity.

4 47 U.S.C. §§ 214(a), 310(d).

5 *See Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, ¶¶ 8-14 (Sept. 14, 1998) ("*MCI-WorldCom Order*"); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer of Control of NYNEX Corp. and Its Subsidiaries*, 12 FCC Rcd 19985, 19994 (1997)("*BA-NYNEX Order*").

6 *See generally Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996)(subsequent history omitted)("*1996 Act*").

7 *MCI-WorldCom Order* at ¶ 9.

regions of the Nation."[8] Also, the Commission must consider "whether the merger will affect the quality of telecommunications services provided to consumers or will result in the provision of new or additional services to consumers."[9] Under these standards, the Commission should reject the proposed merger.

II. A GTE/BELL ATLANTIC MERGER WILL HINDER COMPETITION IN THE LOCAL MARKET

The 1996 Act sought to remove the barriers to local competition and encourage competitive entry through resale, the purchase of unbundled network elements ("UNEs"), and facilities-based entry. Unfortunately, local competition has not developed as envisioned by Congress. Instead, the Bell Operating Companies ("BOCs") and GTE have fought successfully to retain monopoly control over the local exchange and exchange access markets. As demonstrated by the Commission's five orders denying BOC Section 271 applications, meaningful local competition has not yet arrived.[10] Further, without even the incentive offered by Section 271, GTE is even further away than the BOCs from opening its local markets to competitive entry in compliance with the statute. In line with the ILECs' anticompetitive behavior, the Eighth Circuit's rulings regarding the provision of UNEs that already are combined have undermined the ability of competitive local exchange carriers ("CLECs") to provide broad-based local exchange services, and have increased the cost and complexity of local entry. Also, the Commission's prior merger approvals have reinforced the barriers to local competition by

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8 *Applications of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, For Consent to Transfer Control*, 13 FCC Rcd 15236, ¶ 11 (1998).

9 *MCI-WorldCom Order* at ¶ 9.

10 *See, e.g., Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana,* CC Docket No. 97-231, Memorandum Opinion and Order, FCC 98-17 (rel. Feb. 4, 1998).

allowing the ILECs to pool their resources and entrench their monopolies. Against this backdrop of court rulings unfavorable to CLECs and massive ILEC resistance to local competition, the accelerating ILEC concentration through mergers is causing further setbacks to local competition. If the Commission approves this merger, local competition will continue to suffer, and indeed, worsen.

A. The merger will eliminate the potential for significant local competition within the Bell Atlantic/GTE region

By proposing to merge, Bell Atlantic and GTE have effectively agreed not to compete against each other and, as a result, their merger will severely diminish local competition in their respective territories. Applicants claim, however, that "there is no basis for any conclusion that Bell Atlantic, on its own, would be an entrant at all [in GTE's territories outside the Northeast] . . . . [and] no colorable basis for suggesting that GTE might be an . . . . entrant into Bell Atlantic service areas distant from GTE franchise areas."[11] Therefore, they argue, the issue of potential significant competition is limited to specific areas in Pennsylvania and Virginia where the companies are near each other.

First, the Applicants' claim that they would not compete against each other as local exchange carriers except for limited contiguous territories is implausible. The Applicants are two of the largest ILECs, clearly large and strong enough to expand nationwide. Given their expertise, resources and consumer bases, they and other large ILECs are among the most likely candidates to enter each other's local market as competitors.[12] Further, the Applicants plainly

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11 *Application*, Public Interest Statement at 25, n. 22.

12 *See In the Matter of Application of SBC Communications, Inc. and Ameritech Corporation for Consent to Transfer of Control*, CC Docket No. 98-141, ("*SBC-Ameritech Application*") Petition of AT&T to Deny Applications at 22-23, citing *BA-NYNEX Order* at ¶¶ 106-108 (filed Oct. 15, 1998).

have demonstrated a willingness and ability to enter each other's local markets. For example, in New York, GTE North, Inc. has indicated a desire to enter the local market.[13] Were the proposed merger rejected, therefore, it is likely that GTE would expand into the local exchange and other telecommunications markets in New York, as it has in several other states.[14]

There is even more reason to be concerned about the anti-competitive effect of the merger in two states (Pennsylvania and Virginia) where both companies already have a strong presence. Both GTE and Bell Atlantic have substantial brand name recognition, as well as the capability and incentive to compete against each other. Indeed, GTE has concluded local interconnection agreements in these two states.[15] Moreover, GTE previously requested certification to provide local service in the areas served by Bell Atlantic in Virginia, but withdrew the application the day before it filed the merger application.[16] This is a strong indication that GTE was ready and able to compete against Bell Atlantic without the merger.

CompTel submits that a Bell Atlantic/GTE merger poses an even greater threat to local competition than the Bell Atlantic/NYNEX merger. At that time, a little over a year ago, Bell Atlantic had set its sights on NYNEX, an incumbent not unlike GTE. In the *BA-NYNEX Order*, the Commission found that Bell Atlantic possesses unique advantages not possessed by other market participants.[17] These advantages include the fact that it provides local telecommunications services, as opposed to long distance, its extensive marketing in the relevant

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13 *In the Matter of the Petition of Bell Atlantic Corporation for Approval of Agreement and Plan of Merger with GTE Corporation*, New York Public Service Commission, Case No. 98-C-1443 at 3, n.2 (filed Oct. 2, 1998) ("*NY Merger Petition*").

14 *Id.* at 5.

15 *Application*, Exhibit 4, Declaration of Jeffrey C. Kissell at ¶ 15.

16 *Id.*, Declaration of Hubert R. Stallard at ¶ 4.

17 *BA-NYNEX Order* at 20040.

area and a strong reputation in the market as a local telephone company.[18] In addition, the Commission agreed that an ILEC entering an out-of-region market brings particular experience to the interconnection and arbitration processes due to its knowledge of local telephone operations.[19] Thus, the Commission concluded that the merger of Bell Atlantic and NYNEX would eliminate a significant market participant. As a result, "the merger as proposed (without commitments) appear[ed] likely to increase the risk that a carrier may find it profitable to exercise unilateral market power in the relevant markets."[20] Nonetheless, the Commission approved the Bell Atlantic/NYNEX merger with conditions (which, as shown below, have not been fully complied with).

This time, the elimination of a significantly larger segment of in-region local competition is too important a setback to ignore or attempt to condition – and the specter of other major ILEC mergers, such as SBC/Ameritech, magnifies this danger. With each successive ILEC merger, there are fewer potential competitors and, therefore, more harm to competition through the elimination of potential competitors. The Commission should consider what its actions would have been if, over a year ago, it had been presented with a Bell Atlantic/NYNEX/GTE merger and an SBC/Ameritech merger at the same time. CompTel suggests that the Commission would have denied the mergers to protect local competition as envisioned by Congress under the 1996 Act.

B. The merger will make it more difficult to benchmark ILECs' performance

The merger of Bell Atlantic and GTE will make it extremely difficult for the

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18 *Id.*

19 *Id.* at 20040-20041.

20 *Id.* at 20041.

Commission, state regulators, and the industry to properly benchmark the ILECs' performance. In the *BA-NYNEX Order*, the Commission discussed the importance of the existence of several ILECs as an important regulatory tool and warned that future mergers would be increasingly problematic "as the potential for coordinated behavior increases."[21] With major ILEC consolidation, in addition, there will be a likely reduction in "experimentation and diversity of viewpoints in the process of opening markets to competition."[22] And, an increase in cooperation among the remaining ILECs that "can effectively inhibit or delay the implementation of the 1996 Act and other pro-competitive initiatives."[23] Even Bell Atlantic has emphasized the importance of benchmarks: "Each BOC serves as a benchmark against which the Commission can measure the performance and behavior of the next; such comparisons were quite impossible before divestiture."[24]

Most recently, in the *SNET-SBC Order*, the Commission reiterated its concern "about the consolidation among large LECs as a general matter, and . . . [planned to] closely review mergers involving large LECs on a case-by-case basis."[25] In that case, the Commission concluded that the proposed merger between SBC and Southern New England Telecommunications Corporation ("SNET") was not likely to adversely affect the public interest in part because SBC and SNET were not comparable companies in terms of size. The

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21 *Id.* at 20058-20063.

22 *Id.* at 20060.

23 *Id.*

24 *Id.* at 20059, citing *Bell Atlantic, BellSouth, NYNEX and Southwestern Bell Corporation Motion to Vacate the MFJ*, Civil Action No. 82-0192 at 29 (July 6, 1994).

25 *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations form Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee,* Memorandum Opinion and Order, CC Docket No. 98-25 at ¶ 21 (rel. Oct. 23, 1998)("*SNET-SBC Order*").

Commission stated that "SNET is substantially smaller than the 'first tier' LECs – the BOCs and GTE – and has long been subject to different regulatory treatment."[26] Here, Bell Atlantic and GTE are just the sort of large ILECs that the Commission had in mind when it expressed its concern about mergers and their adverse impact on implementation and enforcement of the 1996 Act.

III. OUT-OF-REGION ENTRY BY GTE/BELL ATLANTIC IS NOT A PLAUSIBLE JUSTIFICATION FOR THE MERGER

Applicants suggest that they must merge in order to have the ability to compete in the local markets of other ILECs.[27] This justification is not credible. Applicants' supposed plans include entering at least twenty-one markets in the regions of SBC, Ameritech and BellSouth.[28] They claim that "the separate companies alone could not succeed" in pursuing out-of-region entry.[29] Despite the fact that GTE, for example, has already established a separate corporate unit for planned entry into out-of-region territory and has already developed the expertise required for competitive entry, Applicants would like the Commission to believe that neither Bell Atlantic nor GTE would or could accomplish this sort of expansion independently, without the merger.[30]

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26 *Id.*, citing *Policy and Rules Concerning Rates for Dominant Carriers,* CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20 (1990)(large LECs, namely the BOCs and GTE, were required to move to price cap regulation whereas smaller LECs, such as SNET, were permitted to choose whether or not to move to price cap regulation); 47 U.S.C. § 251(f)(2) (Suspensions and Modifications for Rural Carriers – permitting smaller LECs, such as SNET, to petition for suspension or modification of the interconnection requirements imposed on incumbent LECs by the Telecommunications Act of 1996.)

27 *Application*, Public Interest Statement at 6-8.

28 *Id.* at 6-7.

29 *Id.* at 6.

30 *Id.* at 7.

Both Bell Atlantic and GTE separately have the ability to undertake significant out-of-region entry. CLECs have been able to initiate significant efforts to enter the local market without nearly the resources of GTE or Bell Atlantic. One such carrier, e.spire, has indicated to the Commission that CLECs such as itself, MFS, Brooks Fiber and TCG, have already initiated plans of competitive entry that are equivalent to the sort of entry contemplated by Applicants.[31] In effect, Applicants are requesting that the Commission approve their decision not to compete against each other (thereby hindering local competition) in exchange for their expressions of intent to expand into other out-of-region markets (which they could accomplish without the merger). The Commission should not accept this bargain. Applicants' claim of out-of-region entry is nothing but an effort to hide the extent to which competition will be eliminated in their own regions by puffing about the extent to which competition *may not be diminished* in other regions. In other words, Applicants offer a contrived attempt to disguise a merger that is plainly not in the public interest.

Out-of-region local competition may even be adversely affected by the proposed merger in light of the increased incentive for Bell Atlantic and GTE to frustrate and defeat the market-opening provisions of the 1996 Act. Simply put, when the 1996 Act was adopted, the BOCs had the prospect of revenues to be gained from out-of-region competitive entry to offset the potential loss of in-region monopoly local exchange revenues. Since that time, as the BOCs have merged with each other into larger, better-financed entities, the prospective gains from out-of-region entry continue to diminish while their incentive to preserve their in-region monopoly profits increases dramatically. With each successive merger, the largest ILECs are better able to

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31 *SBC-Ameritech Application*, e.spire Comments at 12 (e.spire, for example, has built 32 state-of-the-art fiber optic networks in the past five years and plans to expand further in the near future.)

resist complying with the local market-opening provisions of the 1996 Act.

IV. BEFORE THE MERGER COULD BE APPROVED, GTE MUST EITHER CEASE HANDLING INTERLATA TRAFFIC IN BELL ATLANTIC'S IN-REGION STATES OR BELL ATLANTIC MUST OBTAIN NECESSARY SECTION 271 APPROVALS

In addition to providing local telephone service in twenty-eight states, GTE provides long distance services and an interLATA backbone Internet network through the country,[32] including in Bell Atlantic's region. As a result, the proposed merger of Bell Atlantic and GTE raises obvious, serious issues of compliance with Section 271, which prohibits the provision of in-region interLATA services by a BOC except upon approval of the FCC after showing full compliance with the market-opening requirements of the statute. Bell Atlantic does not have Section 271 approval to provide in-region interLATA services in any state. The Applicants' principal mention of Section 271 is in a footnote that states: "Bell Atlantic hopes to have needed Section 271 approvals by the time this merger closes. If that process is not complete, applicants will request any necessary transitional relief from the Commission."[33] That treatment of a serious issue is inadequate. As a matter of law, the FCC must reject the merger unless GTE exits the interLATA market in every in-region Bell Atlantic state or Bell Atlantic obtains the requisite Section 271 approvals.

Section 271 of the 1996 Act requires BOCs to obtain approval from the Commission before providing interLATA services originating within their "in-region" states.[34] For Bell Atlantic, Section 271 means that, until it obtains Commission approval, Bell Atlantic or an "affiliate" of Bell Atlantic may not provide interLATA services in a state in which Bell

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32 *Application* at 3.

33 *Id.* at n. 14.

34 47 U.S.C. § 271(a) and (b)(1).

Atlantic was authorized to provide wireline telephone exchange services pursuant to the AT&T Consent Decree, as in effect on the day before the enactment of the 1996 Act.[35] After the merger, GTE clearly would be an "affiliate" of Bell Atlantic,[36] and as such, it may not provide interLATA services in any of Bell Atlantic's in-region states until Bell Atlantic obtains the necessary Section 271 approvals. Therefore, in order to be in compliance with Section 271, GTE and its subsidiaries must exit the interLATA business in the entire Bell-Atlantic region if the merger is approved,[37] or alternatively, Bell Atlantic must obtain Section 271 authority for those states.

It bears emphasis that this conclusion applies fully to GTE's existing long distance operations in Virginia and Pennsylvania. Even though those operations might be in part outside Bell Atlantic's region, they nevertheless are being provided in two of Bell Atlantic's "in-region States" within the meaning of Section 271. Therefore, GTE must completely exit the interLATA business in Virginia and Pennsylvania, or Bell Atlantic must obtain Section 271 approval for those states, before the FCC could consider approving the merger.

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35 *See id.;* 47 U.S.C. § 271(i)(1).

36 47 U.S.C. § 153(1).

37 In the *SNET-SBC Order*, the Commission noted that SBC had not yet obtained (and still has not obtained) Section 271 approval. Therefore, SNET was required to cease its origination of long distance traffic in SBC's seven state region. (*SNET-SBC Order* at ¶¶35-36). However, in stark contrast to GTE, SNET (whose market share in SBC territory was, in any event, negligible) *had already exited* those markets. (*Id.* at ¶ 22). In fact, SNET had taken several steps to ensure that it would not violate the 1996 Act by originating long distance traffic in SBC's region. Specifically, SNET stated that "all 1+ customers [in those states] have now moved to an alternative interexchange carrier of their choice. " (*Id.* at ¶ 37). Also, at SNET's request, all relevant state commissions in SBC's region had cancelled SNET's certificates to provide service and related tariffs. And, SNET stated that it would no longer carry the calls originating in SBC's region through customers' use of calling cards or prepaid calling cards.

V. THE MERGER WOULD HARM COMPETITION IN THE LONG DISTANCE MARKET AND THE INTERNET ACCESS MARKET

As explained above, GTE's origination of long distance services in Bell Atlantic's region would cause the merged entity to be in violation of the 1996 Act. However, assuming that Bell Atlantic receives Section 271 authority, Bell Atlantic/GTE would have control over the origination and termination of significantly more interLATA calls then either entity controls at present. This increase in calls that originate and terminate in the combined Bell Atlantic/GTE region would increase its ability to engage in a cost-price squeeze, thereby harming competition in the long distance market.[38] The cost-price squeeze occurs when an ILEC inflates the costs incurred by unaffiliated long distance carriers through above-cost access charges, while imposing downward pressure on market prices for long distance services because above-cost access charges are nothing more than an internal transfer payment for the ILEC and its long distance affiliate.

The danger of cost-price squeeze here is significant because the merger of GTE and Bell Atlantic involves a much higher concentration of access lines owned by the combined entity. Bell Atlantic has more than forty million access lines in service across fourteen states.[39] GTE has more than twenty-two million access lines in service.[40] The combined entity would control more than sixty-two million access lines. As long as Applicants continue to exercise market power over exchange access and to price access charges significantly above cost, they have the ability to subject any long distance competitor to a cost-price squeeze. The danger of an anti-competitive cost-price squeeze increases with each successive major ILEC merger and will

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38 *See BellSouth Corp. v. FCC*, 144 F.3d 58, 67 (D.C. Cir. 1998).

39 *NY Merger Petition* at 4.

40 *Id.* at 5.

not abate until access rates reflect underlying economic costs.

Approval of this merger would also endanger competition in the market for Internet services. In its review of the MCI-WorldCom merger, the Commission expressed its concern about the potential impact of mergers on the Internet, and therefore required MCI to divest its Internet business prior to the merger.[41] Here, there is a similar cause for concern. Currently, GTE is one of the leading Internet backbone providers.[42] After the merger, GTE plans to expand its capability through the construction of a national fiber network that will reach Bell Atlantic's customers.[43] The planned migration of Bell Atlantic's customer base onto GTE's Internet backbone will increase GTE's market power to a dangerous level. Furthermore, the merger will increase the merged entity's total percentage of Internet users and traffic, thereby harming competition in the Internet access market.

The merger will also increase the risk of coordinated anti-competitive action among the remaining ILECs. If the Commission approves the mergers of SBC/Ameritech and Bell Atlantic/GTE, these two giants would control access to *seventy percent* of all Internet users. By exercising bottleneck control over Internet access, SBC/Ameritech and Bell Atlantic/GTE could agree to exchange traffic on favorable terms and in such a way as to prevent meaningful competition from any other Internet service provider, not unlike the merger's potential impact on the local market. The Commission must draw the line now to avoid this result.

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41 *MCI-WorldCom Order* at ¶¶ 142, 227.

42 *Application*, Public Interest Statement at 16.

43 *Id.*

VI. THE COMMISSION SHOULD DENY THE MERGER DUE TO BELL ATLANTIC'S LACK OF COMPLIANCE WITH THE BA-NYNEX MERGER CONDITIONS

As explained above, the Commission should deny Applicants' request for approval of the merger as anti-competitive and contrary to the public interest. Denial is also required because of Bell Atlantic's lack of compliance with the conditions imposed in the *BA-NYNEX Order*. The Commission should immediately deny the instant application and defer any consideration of the merger until after Bell Atlantic has filed a compliance plan with the Commission subject to notice and comment. Once the Commission has found that Bell Atlantic has fully complied with the conditions previously imposed, then Applicants could reapply for authority to complete their merger.

The Commission expected that the conditions imposed in the *BA-NYNEX Order* would be implemented "in good faith and in a reasonable manner to ensure that competing carriers are able to obtain the full benefits" of the conditions.[44] Bell Atlantic, however, has not to date fully complied with the conditions.[45] Several of these conditions relate to Bell Atlantic/NYNEX's operational support systems ("OSS").[46] In particular, Bell Atlantic/NYNEX was required to provide uniform interfaces for OSS functions throughout their combined region within fifteen months after the date of the merger order.[47] This deadline has come and gone

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44 *BA-NYNEX Order* at 20069.

45 *See, e.g.,* Complaint of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., Federal Communications Commission File No. E-98-12 (filed Dec. 19, 1997); Complaint MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., Federal Communications Corporation File No. E-98-32 (filed March 17, 1998); Complaint of AT&T Corp. v. Bell Atlantic Corp., Federal Communications Commission File No. E-98-05 (filed Nov. 5, 1998).

46 *See BA-NYNEX Order* at Appendix C.

47 *See id.*, Condition 2.

without compliance. Nondiscriminatory access to OSS functions is vital to the development of meaningful competition, and Bell Atlantic's failure to meet this condition shows the futility of imposing conditions upon this type of merger rather than rejecting it outright.

VII. CONCLUSION

For the foregoing reasons, the Commission should deny the Application of Bell Atlantic and GTE for authority to transfer control of licenses because Applicants have failed to show that the merger is in the public interest.

Respectfully submitted,

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November 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 1998, a copy of **Opposition of the Competitive Telecommunications Association** was sent via first-class mail, postage prepaid, to the following:

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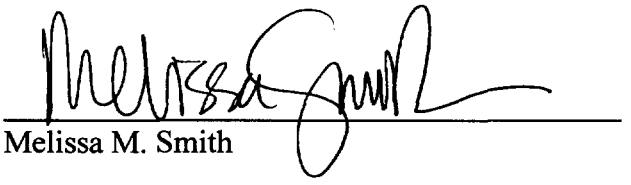

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